

**BAKER, Chief Judge**

Appellant-defendant Leighann J. Mitchell appeals the revocation of her probation, challenging the sufficiency of the evidence. Mitchell also claims that the trial court erred in ordering her to serve the entire seven-year suspended sentence that was originally imposed and that her due process rights were violated when the trial court awaited the results of a subsequent drug screen before determining what sentence to impose. Finding no error, we affirm the judgment of the trial court.

### FACTS

On April 15, 2003, the State filed an information in three counts charging Mitchell with possession of methamphetamine, a class D felony, possession of a controlled substance, a class D felony, and a legend drug violation. On June 3, 2003, Mitchell was charged with an additional count of dealing in methamphetamine, and on June 10, 2003, she was charged with one count of dealing in methamphetamine and one count of possession of precursors for an illegal drug lab, a class D felony.

Thereafter, Mitchell and the State entered into a plea agreement, whereby Mitchell agreed to plead guilty to one count of dealing in methamphetamine, a class B felony, in exchange for the dismissal of all remaining charges. There was no agreement with regard to sentencing.

On March 9, 2004, Mitchell was sentenced to ten years of incarceration, with two years suspended to probation. Thereafter, Mitchell filed a motion to modify her sentence, which the trial court granted on November 23, 2005. Specifically, the trial court modified Mitchell's sentence to ten years, with seven years suspended to probation.

On September 13, 2007, the State filed a petition to revoke Mitchell's probation, alleging the following violations:

1. Has moved, and left no forwarding address. Ms. Mitchell has moved at least three times since June 2007. Her current whereabouts are unknown.
2. Failed to provide a proper urine sample for testing on 6-5-07. The creatinine level on the sample failed to register in the acceptable range for testing. It was certified as a "very dilute specimen."
3. Failed to provide a proper urine sample for testing on 8-21-07. The creatinine level on the sample failed to register in the acceptable range for testing. It was certified as a "very dilute specimen."
4. Is currently unemployed. Ms. Mitchell was fired from her job at Dairy Queen in September 2007 for failing to show up to work.
5. Has failed to pay monies monthly as instructed.

Appellant's App. p. 37-38. Thereafter, on October 9, 2007, the State filed a second petition to revoke Mitchell's probation, which alleged that she had failed a urine drug screen for marijuana on September 21, 2007.

During the revocation hearing, defense counsel admitted that Mitchell had violated allegations four and five above and that she had failed the drug screen. However, defense counsel requested that the trial court permit Mitchell to undergo a subsequent drug screen after the hearing. Following the presentation of the evidence, the trial court commented:

Ms. Mitchell, when I began to look at this file this morning, the first thing that I look at is that, first of all, at your request, I modified your sentence to your benefit. And I did that because you were given the opportunity for treatment at Richmond, which you completed, and you were given the opportunity to go to Camp Hope. Here we are again. You've been employed two months out of the last 24. You quit school after you received state and federal tax dollars to go. In other words, that money was just blown. Somebody has to pay for that. It just doesn't fall out of the sky. You're living with a parolee. You failed a

urine screen. You still owe probation monies. You have no permanent address. I mean, I've given you every opportunity to keep yourself out of jail for a Class B Felony conviction. You can't do it. So, at this time I'm going to revoke your suspended sentence. You're going to go to prison. I am going to let you submit to a urine screen today and . . . once I get the result of that back, I will make a decision how much of your sentence you should serve.

Tr. p. 25 (emphasis added). Although the results of the drug test do not appear in the record, they were given to the prosecutor and Mitchell's counsel eleven days later. The trial court ordered Mitchell to serve the entire seven-year sentence that had been previously suspended. Mitchell now appeals.

## DISCUSSION AND DECISION

### I. Sufficiency

Mitchell first argues that the evidence was insufficient to support the probation revocation. Specifically, Mitchell maintains that the revocation order must be set aside because she "made no sworn admission to having violated her probation, other than that she was unemployed and that she had been fired by Dairy Queen." Appellant's Br. p. 5.

A probation revocation hearing is civil in nature and the State must prove the alleged violation only by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and will not reweigh the evidence or reassess the credibility of the witnesses. Sanders v. State, 825 N.E.2d 952, 954-56 (Ind. Ct. App. 2005). We will review the trial court's revocation of probation for an abuse of discretion. Smith v. State, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000).

We also note that probation is a favor granted by the State. Sanders, 825 N.E.2d at 955. However, once the State grants that favor, it cannot simply revoke the privilege at its discretion, but rather must provide some minimal level of procedural due process to the probationer. Id. The trial court must make a factual determination that a violation has occurred, and it must then determine if the violation warrants a revocation. Id. Also, the defendant must be given an opportunity to present evidence that explains and mitigates the violation. Id. Violation of a single condition of probation is sufficient to support a probation revocation, and a defendant's admissions constitute sufficient evidence to support the revocation. See Parker v. State, 676 N.E.2d 1083, 1086 (Ind. Ct. App. 1997) (holding that the evidence was sufficient to support a probation revocation when the defendant admitted to the violations through his attorney).

As set forth above, defense counsel admitted that Mitchell had violated three conditions of her probation. Tr. p. 1-2. Mitchell then testified in an attempt to explain and/or mitigate the violations. Id. at 11-22. However, the admissions to the violations by Mitchell's counsel were sufficient to support the revocation. Parker, 676 N.E.2d at 1085-86. As a result, Mitchell's contention fails.

## II. Imposition of Previously Suspended Seven-Year Sentence

Mitchell next argues that even if we affirm the probation revocation, the trial court abused its discretion when it ordered her to serve the entire seven-year sentence that had been originally suspended. Mitchell claims that she was making "significant positive change in her life" and, therefore, an executed sentence was not warranted. Appellant's Br. p. 6.

A trial court's sentence following a probation revocation is reviewed for an abuse of discretion. Sanders, 825 N.E.2d at 957. If the trial court finds that a probationer has violated a condition of probation, it may order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g)(3).

The trial court emphasized that Mitchell had been given several chances to avoid prison. Moreover, Mitchell's probation officer did not believe that Mitchell could successfully complete probation in light of her behavior. More specifically, the probation officer testified:

You know many times these cases are pretty easy for me to sit here and say that the person needs to go to jail or they don't. I'm not for sure really what the answer is with Leighann Mitchell. I can tell the court that there's no possible way she could complete probation. She moves frequently. She jumps around. It's hard to keep in contact with her. She has absolutely no responsibility. She'd given up her kids. She won't look for a job. There's just nothing that she's doing right now that would indicate that she could ever complete probation. Um a lot of these folks, you can see a side of them that says that they belong in prison. I'm not sure about Leighann. I just don't know what else this court can do other than say you need to do some jail time because she's not going to complete probation.

Tr. p. 4.

In essence, Mitchell admitted to the probation violation, and it was within the trial court's discretion to decide what portion of the previously suspended sentence she should serve. See Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005) (holding that when the trial court finds that the defendant has violated his probation, it may order the defendant to prison to serve any part of the sentence that was suspended).

### III. Due Process Violation

In a related issue, Mitchell argues that her due process rights were violated because the trial court based the length of the sentence on the results of the subsequent drug screen. In essence, Mitchell claims that she was denied the right to challenge the evidence against her.

Notwithstanding this claim, the trial court decided to revoke Mitchell's probation after finding other violations. Tr. p. 1, 2. And, as discussed above, once the trial court determined that the violations had occurred, it was within its discretion to order execution of all or part of the sentence that was originally suspended. I.C. § 35-38-2-3(g)(3). Therefore, Mitchell's due process claim is misplaced, given that her probation violation had already been established and the trial court decided to revoke her probation before the subsequent drug screen was ever administered.

Additionally, it was Mitchell who requested the test. She did not object to the results of the drug screen, and she never requested an additional hearing regarding the test. Even on appeal, Mitchell challenges neither the results nor the validity of the drug screen. For all of these reasons, Mitchell's claim that her due process rights were violated fails.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.